



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG066**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; Issuance of an Incidental Harassment Authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Point Blue Conservation Science (Point Blue) to incidentally harass, by Level B harassment only, marine mammals during seabird research activities in central California.

**DATES:** This Authorization is effective from July 7, 2018 through July 6, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

## **Summary of Request**

On January 4, 2018, NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird research monitoring conducted at three locations in central California. Point Blue's request is for take of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) by Level B harassment only. Neither Point Blue nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued eight IHAs to Point Blue for similar work from 2006 through 2017 (72 FR 71121; December 14, 2007, 73 FR 77011; December 18, 2008, 75 FR 8677; February 19, 2010, 77 FR 73989; December 7, 2012, 78 FR 66686; November 6, 2013, 80 FR 80321; December 24, 2015, 81 FR 34978; June 1, 2016, 82 FR 31759; July 7, 2017). Point Blue complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section. The planned seabird research activities will occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, plan to conduct research activities that have been ongoing for thirty years. These partners are conducting this research under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. We considered the IHA request for 2018-2019 activities as adequate and complete on February 28, 2018.

## **Description of Activity**

Point Blue plans to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; and resupply a field station annually in central California (*i.e.*, SEFI,

ANI, and PRNS). The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations. Take by Level B harassment may occur due to incidental disturbance of pinnipeds by researchers during monitoring activities. A detailed description of the planned research project is provided in the **Federal Register** notice for the proposed IHA (83 FR 20045; May 7, 2018). Since that time, no changes have been made to the planned research activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

### **Comments and Responses**

A notice of NMFS's proposal to issue an IHA to the Point Blue was published in the **Federal Register** on May 7, 2018 (83 FR 20045). That notice described, in detail, Point Blue's activities, the marine mammal species that may be affected, and the anticipated effects on marine mammals. During the 30-day public comment period, the Marine Mammal Commission (Commission) provided comments as described below and concurred with NMFS's findings and recommended the issuance of an IHA, subject to the inclusion of the mitigation, monitoring, and reporting measures.

*Comment:* The Commission requested clarification of certain issues associated with NMFS's notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

*Response:* The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Importantly, such renewals would be limited to where the activities are identical or nearly identical to those analyzed in the proposed IHA, monitoring does not indicate impacts that were not previously analyzed and authorized, and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as are all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

### **Description of Marine Mammals in the Area of Specified Activities**

A detailed description of the species likely to be affected by the research and monitoring project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 20045; May 7, 2018). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions as well as to NMFS's website

(<https://www.fisheries.noaa.gov/topic/population-assessments/marine-mammals>) for generalized species accounts. All species that could potentially occur in the planned survey areas are included in Table 1. Note that Northern fur seals (*Callorhinus ursinus*) and Guadalupe fur seals (*Arctocephalus townsendi*) have been known to occur at some seabird research sites. However, their occurrence is extremely rare. Therefore, Point Blue did not request take of these species.

**Table 1. Marine mammals potentially present in the vicinity of study areas**

Species	Scientific Name	Stock	ESA/MMPA status; Strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	<i>Zalophus californianus</i>	U.S.	-; N	296,750 (n/a; 153,337; 2011)	9,200	389
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	D; Y	41,638 (n/a; 41,638; 2015)	2,498	108
Family Phocidae (earless seals)						
Harbor seal	<i>Phoca vitulina richardii</i>	California	-; N	30,968 (0.157; 27,348; 2012)	1,641	43
Northern elephant seal	<i>Mirounga angustirostris</i>	California breeding stock	-; N	179,000 (n/a; 81,368; 2010)	4,882	8.8

1- Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2- NMFS marine mammal stock assessment reports online at: [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/). CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

3 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

## Potential Effects of Specified Activities on Marine Mammals and their Habitat

The effects of seabird researchers at the specified locations have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (83 FR 20045; May 7, 2018) included a discussion of the effects of Level B harassment on marine mammals. Therefore, that information is not repeated here; please refer to the **Federal Register** notice for that information. No instances of serious injury or mortality are expected as a result of the specified activities.

### **Estimated Take**

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS's consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pedestrian researchers. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated. NMFS bases these take estimates on historical data from five previous monitoring reports of the same activity to generate 95 percent confidence interval

maximums (assuming normal distribution) using STATA, a general-purpose statistical computer software package. Results are shown in Table 2. Takes recorded in all previous monitoring reports were based on occurrences that are consistent with Levels 2 and 3 of the three-point-scale (See Table 4). For California sea lions and harbor seals, NMFS elected to use the values projected as shown in Table 2. However, since the projected take numbers for northern elephant seals and Steller sea lions were very close to recorded takes in 2017-2018, NMFS increased the take numbers for these species by 20 percent over the actual 2017-2018 take numbers shown in Table 2. This provides a buffer so Point Blue can continue their work if recorded takes for those two species exceeded take numbers generated by the STATA program. Authorized take numbers are shown in Table 3.

**Table 2. Past Reported Take Observations and Estimated Take Authorized for 2018-2019 Point Blue Activities According to Statistical Analysis**

Species	Reported Take Observations from Past Seasons <sup>1</sup>					Authorized Take 2018-2019 IHA
	IHA (2013-2014)	IHA (2014-2015)	IHA (2015-2016)	IHA (2016)	IHA (2017)	
California Sea Lions	3,610	2,254	4,646	36,397 <sup>1</sup>	22,612	32,623
Northern Elephant Seals	67	30	97	169	198	239
Harbor Seals	109	141	259	292	234	304
Steller Sea Lions (E-DPS)	4	12	6	31	35	43

<sup>1</sup>Large increase in California sea lions likely due to El Niño event.

**Table 3 Population Abundance Estimates, Total Level B Take, and Percentage of Population That May be Taken**

Species	Stock	Stock abundance	Total Level B Take	Percentage of Stock or Population
California sea lion	U.S.	296,750	32,623	10.9
Northern elephant seal	California breeding stock	179,000	239	0.13

Harbor seal	California	30,968	304	0.98
Steller sea lion	Eastern U.S.	41,638	43	0.10

## **Mitigation Measures**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

1) the manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations,.

*Mitigation for Marine Mammals and their Habitat*

Point Blue has based the mitigation measures, which they will employ during the research, on the implementation of protocols used during previous Point Blue research activities under previous authorizations for these activities. Note that Point Blue and NMFS have refined mitigation requirements over the years in an effort to reduce behavioral disturbance impacts to marine mammals.

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities Point Blue will implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;

(2) Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.*, site surveys will not be conducted if fur seals are present; if other pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);

(3) Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.*, if a site cannot be accessed or sampled due to the presence of pinnipeds);

(4) Cease or delay visits if the number of takes that have been granted are met, if a species for which takes were not granted is observed (*e.g.*, northern fur seals and Guadalupe fur seals), or if pups are present

(5) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

(7) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

(8) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view;

(9) Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research goals for ANI to minimize the number of trips to the island; and

(10) Require beach landings on ANI only occur after any pinnipeds that might be present on the landing beach have entered the water.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the prescribed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### **Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for

authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender and life history stage (*e.g.*, adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.*, pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

Note that the lead biologist should serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 4. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

**Table 4. Levels of Pinniped Behavioral Disturbance**

<b>Level</b>	<b>Type of Response</b>	<b>Definition</b>
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

\* Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information will be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2018 through December 31, 2018. NMFS has requested that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA's initiation or expiration dates. This will ensure that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report to NMFS Office of Protected Resources by April 1, 2019. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft final report will be considered to be the final report. This report must contain the informational elements described above, at minimum.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue will immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

- (1) Time and date of the incident;
- (2) Description of the incident;
- (3) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (4) Description of all marine mammal observations in the 24 hours preceding the incident;
- (5) Species identification or description of the animal(s) involved;
- (6) Fate of the animal(s); and
- (7) Photographs or video footage of the animal(s).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Point Blue will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the IHA

(*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue will report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue will provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

### **Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance that would negatively impact an individual animal's fitness, or result in injury, serious injury, or mortality. Although Point Blue's survey activities may disturb marine mammals, NMFS expects those impacts to occur to localized groups of animals at or near survey sites. Behavioral disturbance would be limited to short-term startle responses and localized behavioral changes due to the short duration (ranging from <15 minutes for visits at most locations up to 2-5 hours from April-August at SEFI) of the research activities. At some locations, where resupply activities occur, visits will occur once every two weeks. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (though the potential exists). These short duration disturbances (in many cases animals will return in 30 minutes or less) will generally allow marine mammals to reoccupy haulouts relatively quickly; therefore, these disturbances would not be anticipated to result in long-term disruption of important behaviors. No surveys will occur at or near rookeries as researchers will have limited access to SEFI, ANI, and PRNS during the pupping season and will not approach sites should pups be observed. Furthermore, breeding animals tend to be concentrated in areas that researchers generally do not visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during stampedes.

Level B behavioral harassment of pinnipeds may occur during the operation of small motorboats. However, exposure to boats and associated engine noise would be brief and would not occur on a frequent basis. Results from studies demonstrate that pinnipeds generally return to their sites and do not permanently abandon haul-out sites after exposure to motorboats. The

chance of a vessel strike is very low due to small boat size and slow transit speeds. Researchers will delay ingress into the landing areas until after the pinnipeds enter the water and will cautiously operate vessels at slow speeds.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized.
- Only limited behavioral disturbance in the form of short-duration startle reactions is expected while mitigation requirements employed by researchers (*e.g.* move slowly, use hushed voices) should further decrease disturbance levels.
- There is no activity near rookeries and researchers will avoid pups.
- There is likely to be limited impact from boats due to their small size, maneuverability and the requirement to delay ingress until after hauled out pinnipeds have entered the water.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

### **Small Numbers**

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are

available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

As mentioned previously, NMFS estimates that four marine mammal stocks could potentially be affected by Level B harassment under the authorization. For each stock, these numbers are small relative to the population size. As shown previously in Table 3, these incidental harassment numbers represent approximately 10.9 percent of the U.S. stock of California sea lion, 0.98 percent of the California stock of Pacific harbor seal, 0.13 percent of the California breeding stock of northern elephant seal, and 0.10 percent of the eastern distinct population segment of Steller sea lion. Note that the number of individual marine mammals taken is assumed to be less than the take estimate (number of exposures) since we assume that the same animals may be behaviorally harassed over multiple days.

Based on the analysis contained herein of the planned activity (including mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

### **Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

#### **Endangered Species Act (ESA)**

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

#### **Authorization**

As a result of these determinations, NMFS has issued an IHA to Point Blue for the

potential harassment of small numbers of marine mammals incidental to seabird research activities in central California, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: June 29, 2018

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